

SENATE FINANCE COMMITTEE
THIRD SPECIAL SESSION
August 24, 2021
1:02 p.m.

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CALL TO ORDER

Co-Chair Stedman called the Senate Finance Committee meeting to order at 1:02 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman
Senator Natasha von Imhof (via teleconference)
Senator Donny Olson (via teleconference)
Senator Bill Wielechowski (via teleconference)
Senator David Wilson (via teleconference)

MEMBERS ABSENT

None

ALSO PRESENT

Neil Steininger, Director, Office of Management and Budget, Office of the Governor; Senator Gary Stevens.

SUMMARY

SB 3001 APPROP: OPERATING; PERM FUND; EDUCATION

SB 3001 was HEARD and HELD in committee for further consideration.

#sb3001

SENATE BILL NO. 3001

"An Act making an appropriation from the general fund to the Department of Education and Early Development for the payment of educational programs; making an appropriation from the earnings reserve account for the payment of permanent fund dividends; making an appropriation from the earnings reserve account to the

budget reserve fund; and providing for an effective date."

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NEIL STEININGER, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, discussed the presentation "State of Alaska Office of Management and Budget; Senate Finance Committee; Third Special Session Budget Overview - SB 3001; August 24, 2021" (copy on file). He addressed slide 2:

Durable Fiscal Plan

- Constitutionally protect Permanent Fund, PFD, and PCE
- Establish meaningful limits to expenditure growth
- Provide for a bridge to a sustainable fiscal plan

FY22 Budget

- 2021 Permanent Fund Dividend - Resolved in SB3001
- FY22 Sweep impacts
 - Power Cost Equalization Endowment - Resolved by the AFN case decision
 - Higher Education Scholarship Programs - Resolved in SB3001
 - Other operating and capital budget shortfalls - Ongoing

Mr. Steininger noted that there was an attachment to the presentation (copy on file) that listed the other operating and capital budget shortfalls shown on the slide.

Co-Chair Stedman stated that there were only four slides and requested that Mr. Steininger complete the presentation of the slides uninterrupted and then the committee would address questions on the bill components.

Mr. Steininger pointed to slide 3, "Elements of SB3001":

Permanent Fund Dividend Payment

- \$1.53 billion for the payment of the 2021 PFD based on 50 percent of the POMV draw, providing an estimated \$2,350 per eligible Alaskan

Alaska Student Scholarships and Grants

- \$11.7 million to Alaska Performance Scholarship Awards
- \$6.4 million to Alaska Education Grants
- \$3.3 million to WWAMI Medical Education

Constitutional Budget Reserve (CBR) Deposit

- \$1.47 billion one-time transfer from the earnings reserve account to the CBR

Mr. Steininger noted that the student scholarships and grants listed on the slide appeared with zero funding amounts in the bill because there was a fund source change from a fund that was subject to the sweep to Unrestricted General Funds (UGF). The fund change was being made in Section 2 and Section 3. He continued that the \$1.47 billion one-time transfer to the Constitutional Budget Reserve (CBR) in combination with the Permanent Fund Dividend (PFD) payment made up the \$3 billion "bridge fund" that the Department of Revenue (DOR) had spoken of during its presentation. He explained that the bridge funding allowed for the bridge to the sustainable fiscal plan introduced by the administration.

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Mr. Steininger addressed slide 4, "Budget Impacts of CBR Vote Failure":

Immediate Issues

- Unfunded operating items -Scholarships and education grants
 - Resolved in SB3001 with UGF backfill

Delayed Issues

- Unfunded capital projects
 - Projects delayed until valid funding source is appropriated
- Partially funded operating items
 - Programmatic impacts likely in second half of FY22
 - Legislative options exist to address shortfalls

Mr. Steininger discussed budget impacts of the three-quarters vote failure, and detailed that without the appropriation, Washington, Wyoming, Alaska, Montana, and Idaho (WWAMI) students would receive notice of having to pay out-of-state tuition. He referenced the document "Budgetary Issues Due to the CBR Vote Failure" (copy on file), which showed a percent of the overall operating budget impacted by the shortfalls due to the sweep. Most of the programs would have the impacts take effect in the

third or fourth quarter of the fiscal year. He contended that the shortfalls were not an operational problem with an immediate impact, and there were different legislative options to address the shortfalls.

Co-Chair Stedman pointed to slide 2, which he thought showed a preference for a third special session and durable fiscal plan. He was not sure how to work the option through the system in two weeks. He asked Mr. Steininger to discuss the concept of the constitutionally protected PFD, before addressing the bridge funding or the expenditure/growth issue.

Mr. Steininger replied that he was present mostly to discuss the bill. He thought a thorough discussion, particularly regarding the PFD and the Power Cost Equalization (PCE) Program, it would necessitate a presentation by the commissioner of DOR to discuss modelling of the issues.

Senator Olson pointed out that Mr. Steininger was the Office of Management and Budget (OMB) director, and the DOR commissioner was an appointee that might not have the same longevity. He pointed out that the members had a great deal of experience and had seen many budget proposals. He asked Mr. Steininger to address Co-Chair Stedman's question.

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Co-Chair Stedman pointed out that the committee was probably the most seasoned Senate Finance Committee in the history of the state, and it had dealt with a variety of issues. He relayed that the committee had concerns it wanted addressed. He referenced the second bullet, "Establish meaningful limits to expenditure growth," and cited that since 2016 there had been virtually no growth in statewide operating and agency expenditures. He did not expect the trend to change. He questioned the reasoning for the administration's proposal of establishing meaningful spending limits, when there was a 5 percent payout from the Earnings Reserve Account (ERA), which served as a spending cap. He asked for Mr. Steininger to expand on the proposal.

Mr. Steininger referenced SJR 5, which proposed an amendment to the constitutional appropriation limit. He commented on prior events and the concern that the current appropriation limit would not constrain overspending during

a windfall. He recalled that there were only two fiscal years in which the current appropriation limit was below total revenue available for expenditure. He thought the experience of the last decade showed that it was challenging to reign spending back in. He thought the proposal looked to the future where the state's situation had changed and would provide meaningful constraints on the changes in the future.

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Co-Chair Stedman stated that the committee had not seen a forecast of massive surpluses from any direction. He recalled being up against the spending limit in the current year and thought also for the following year. He referenced using American Rescue Plan Act (ARPA) funds to balance the budget. He discussed contemplation of constitutional changes in May, when there was an election in the fall. He thought many months were needed to work through the issues and questioned an expensive special session when there was time already built into the regular session to consider proposals. He thought it was questionable to constrain the budget to work on an issue that could be worked on the following May.

Co-Chair Stedman discussed the proposed bridge funding, and concerns that the proposal was an overdraw of the Permanent Fund for \$3 billion. He asked why the legislature should consider advancing over \$1.5 billion to the CBR years in advance. He asked why the action was germane over the next year. He had not seen any fiscal models or presentations that showed the state running out of cash in the next year. He asked why there was urgency to the bridge funding, other than politics.

Mr. Steininger explained that the bridge funding was proposed to bring the fiscal plan into balance until revenues increased or other changes to be made. He asserted that if all the components of the fiscal plan were enacted before the components were enacted, it would constitute a "show of faith" that the plan worked. He contended that there needed to be funds to go to in order to avoid a draw of the ERA over 5 percent. He thought some estimates had the CBR going below \$1 billion, which was too low of a balance for long term sustainability to act as the state's working capital account. The proposed transfer would allow for the state to make it until the point in which the

proposed models balanced. Doing the transfer now allowed the state to follow the rules of the proposed plan in advance of a vote by the people to show that the plan worked. He noted that the proposed bridge funding was a one-time draw, and the assets were necessary for the basic financial health of the state going forward.

Co-Chair Stedman shared a concern that the plan was deficient and did not add up.

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Senator von Imhof thanked Mr. Steininger for his testimony. She thought he had stated that he did not want to discuss topics beyond the bill, but she opined that part of presenting a bill was to discuss the impacts of the provisions under multiple lenses. She thought the committee should be discussing the trade-offs, such as taking \$1.53 billion for the PFD payment with the trade-off of not paying for many of the other vetoes. She observed that the governor had put in three vetoes pertaining to the Alaska Student Fellowship Grant. She noted the exclusion of public health nursing, the Alaska travel industry, Regional Educational Attendance Area (REAA) Funding, Alaska vocational updates, and other items. She asked about the economic impacts to the state and to individuals as a result of not funding the items listed.

Mr. Steininger clarified that the education programs, the education grant, the scholarship program, and WWAMI were not vetoed from the governor's bill; and the governor had supported the items in every bill the administration put forward. He asserted that the reason the items were addressed in HB 3001 was due to the fact that the original appropriations were made from a fund subject to the sweep and there had not been a successful vote. The items were unfunded, and with the PFD program were the programs with immediate impact on Alaskans and were supported in the bill. He thought the bill should not be interpreted as lack of support for the other programs tied up by the sweep issue, which he asserted did not have the same immediate impact.

Mr. Steininger continued that the administration had proposed a solution via the bill put forward the previous December in the form of the reverse sweep. Since the sweep had not passed, the administration was considering

solutions for other programs, which had varying sizes of shortfalls. He emphasized that the administration was focusing on the fiscal plan, and to that end only addressed things related to the plan and impacting Alaskans in the bill. He asserted that the administration was looking to other opportunities to resolve the remaining issues.

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Senator von Imhof cited that REAA School funding was immediate. She knew students returned to school recently and cited school conditions. She emphasized the immediacy of public health nursing, and the strain on ICU beds and the recent rush for Covid-19 vaccinations. She thought the administration might want to reevaluate its priorities.

Senator Wilson referenced the fund switch mentioned by Mr. Steininger. He asked if OMB had begun to enact the sweep in terms of switching fund sources and closing out accounts. He asked if the administration felt the reverse sweep would not happen.

Mr. Steininger replied that Senator Wilson's question was complex. He detailed that the administration had restricted expenditures on any appropriations made from sweepable funds that did not show current year revenues. He referenced the supplemental document, which listed the restrictions. The administration was restricting expenditures beyond existing fund revenues to ensure that the state did not overspend revenue in the fiscal year. The money in the funds would stay in place until the accounting process was done. Once the Annual Comprehensive Financial Report (ACFR) was released and the Legislative Audit Division finished its final audit finding, the amount of funding needed to move to the CBR would be known. The actual transfer of cash did not happen till much later in the year.

Senator Wilson asked about trying to get the votes for a sweep rather than doing a fund source switch. He asked if the position of the administration had changed with regard to using General Funds.

Mr. Steininger relayed that the administration's position had not necessarily changed. He recounted that in December the administration had introduced a budget that included a reverse sweep, which was not enacted through the vote of

the legislature. He continued that SB 3001 proposed to take a different route to address the scholarship programs that impacted individuals directly and immediately.

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Co-Chair Stedman wondered how much time the process would take if the state did not go through the reverse sweep process. He asked if Mr. Steininger expected additional work for his department.

Mr. Steininger stated that evaluating the impacts of the sweep and working through the issues with agencies had comprised much of the work of his office over the previous several months. He noted that looking into the impacts of the sweep had added another layer onto the normal budgetary process. He referenced the spreadsheet, which was the work product of many refinements over time.

Co-Chair Stedman asked if there was a cost savings involved.

Mr. Steininger answered in the negative.

Co-Chair Stedman asked if the legislature could expect a supplemental budget request if there was no reverse sweep, or if there would no budget impacts to be concerned about.

Mr. Steininger relayed that Co-Chair Stedman could expect that in looking at the list of programs to expect that the solutions for each program might be different. He used the example of using UGF supplemental to backfill funding that was swept into the CBR, or a future budget that reflected cuts. He relayed that the legislature would not see a supplemental for the time spent by OMB, accounting staff, or budget staff as it was part of the job to respond to and evaluate budget issues.

Co-Chair Stedman thought Mr. Steininger's claim that the increased workload was absorbed indicated that OMB had too much flexibility with its budget. He thought the matter needed further review. He recalled that all of the other OMB directors had been very concerned about the extra workload related to the sweep getting bogged down in politics. He wanted more clarity as to why the administration was advocating for the reverse sweep during the special session. He reminded that before the budget was

submitted, OMB scrubbed the accounts for excess funds, as did the legislature once it received the budget.

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Mr. Steininger clarified that because OMB was spending time working on the sweep issue, it was not spending time working on other issues. He asserted that it was not that OMB had "slack capacity" that it was devoting to looking at the reverse sweep, but rather that there were other issues OMB was unable to investigate further. He addressed the issue of reviewing funds during the budget development process, which he explained was the reason for some holes as a result of the sweep.

Mr. Steininger asserted that some of the funds, such as the Alcohol and Tobacco Substance Use Fund, were overcapitalized and the legislature and administration had engaged in a draw-down. Once the excess balance was swept, any potential draw down became an over-appropriation of revenue. He continued that the over-appropriations and shortfalls were the result of a deliberate and thoughtful effort to draw down excess balances in Designated General Funds (DGF) to reduce the burden on the General Fund. He thought the sweep highlighted operational issues. He did not think there was a one-size-fits-all solution.

Mr. Steininger added that the scholarship programs and educational grants were very important and backfilling the programs with some restricted GF made sense. He qualified that some other programs with smaller shortfalls needed to be evaluated and a special session without the subcommittee process was not the right environment to do a deep dive, and he anticipated there would be future discussions regarding how to make the programs more durable.

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Senator Wilson mentioned the Recidivism Fund and asked how funding gaps would be filled going forward.

Mr. Steininger relayed that funding gaps, especially when there was no ability to make up funds through operational changes, would require UGF backfill to ensure operational needs were met. He continued that some of the funds had excess balances the administration had used to lessen the need for UGF in a given fiscal year, but the costs

remained, and it was a case-by-case situation as to how the backfill or change in operational costs would be addressed.

Senator Wilson asked if the state had enough funds to pay its bills without access to the CBR.

Mr. Steininger thought the largest challenge in addressing the issues would be if accessing the CBR was required. He noted that many of the instances in which the administration had over-appropriated General Fund sources was done to reduce the UGF burden and the amount needed to draw from the CBR, and detailed conversations including the subcommittee and budget process would be needed.

Senator Wilson asked if there needed to be a CBR vote during the current session to ensure that there was adequate cash flow without going into deficit spending.

Mr. Steininger relayed that there was currently enough of a General Fund surplus in FY 22 to address the issues.

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Senator von Imhof alluded to Mr. Steininger's reference to cleaning up some of the designated funds but recalled that the administration's original budget had well over \$100 million scattered through the budget using designated funds as fund sources for a multitude of programs. She thought the administration had since changed its intent.

Mr. Steininger stated that the administration had not necessarily changed how it put together a December budget but was simply responding to the operational changes caused by not having a three-quarter vote. Without the vote to access funds, the administration had to reassess how to go about funding programs. He added that the administration would still be putting forward a budget utilizing DGF, because there would be DGF revenue in future years from sources such as alcohol and marijuana taxes. He explained that after the sweep occurred, the administration would no longer have access to existing balances, so the appropriations would have to be in line with revenue estimates for the different funds.

Senator von Imhof considered that if the administration truly supported a reverse sweep, it would be nice to see a press conference that indicated so. She referenced the

receipt of \$505 million in Covid-19 relief funds, which she thought had a material positive impact on the budget that gave the opportunity to fund many programs that had been vetoed or not funded because of the reverse sweep. She thought the funds had created a cushion and thought it was important to acknowledge that the funds were a one-time event.

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Co-Chair Stedman expressed concern regarding the administration's position on the reverse sweep. He mentioned the Alaska Performance Scholarship (APS) balance being swept. He asked if there was any opportunity cost and performance difference between the scholarship fund and the CBR the way the accounts were currently structured.

Mr. Steininger relayed that the CBR was invested much more conservatively, due to the large portion of the balance that was needed for everyday operations in comparison to the overall size of the fund. He continued that the Higher Education Investment Fund had a larger balance compared to its annual appropriation need, so could be invested with a longer-term outlook. If the fund became part of the CBR, there would be a transition period where it would begin to be invested more conservatively.

Co-Chair Stedman recalled testimony from the previous day that indicated there would be tens of millions in opportunity cost dealing with the lack of the reverse sweep. He thought the administration had proposed an expensive maneuver to the treasury. He thought it was problematic that the APS balance could be spent from the CBR. He asked Mr. Steininger if the committee should not expect the administration to pursue a reverse sweep.

Mr. Steininger stated that after the reverse sweep did not pass in the appropriation bill HB 69, the administration had chosen an alternate way to ensure the programs were funded in in SB 3001. He argued that that the sweep was not a maneuver or choice that was made, but rather a constitutional requirement that could only be reversed with a three-quarter vote of both bodies of the legislature. He added that the vote threshold to spend any funds moved to the CBR was higher than that of the Higher Education Fund.

Co-Chair Stedman expanded that the maneuver he had referenced related to the first year of the administration when it had advocated to sweep all kinds of funds, after which its position had changed. He considered it to be a political maneuver, rather than the constitutional obligation to pay back the debt owed to the CBR from the General Fund. He reiterated concern about the opportunity cost of moving funds, and concern about liquidating the APS funds. He discussed the spending limit and the 5 percent draw rate.

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Senator Hoffman thought the committee members fully understood the constitutional requirements of the reverse sweep. He relayed that he had been chair of the House Finance Committee when the constitutional amendment had been written. He asked how much energy the administration would expend to achieve the reverse sweep, or if the offices would expend time on accounting and accept the fact that the reverse sweep did not happen.

Mr. Steininger could not speak to political strategy, but stated that OMB was present to help find solutions to ensure the programs were funded and that there were not operational impacts. He continued that reversing the sweep was technically the most expeditious way to resolve the issues but might not be politically the most expeditious way. He added that it was not a matter for OMB to weigh in on; rather, OMB's role was to resolve the operational issues in the departments and encourage resolution to the issues.

Senator Hoffman referenced Co-Chair Stedman's question about opportunity costs and noted that it was the second month of the fiscal year. He also recalled that there had been a report of \$20 million in opportunity costs that were being lost as a result of not having the reverse sweep. He asked why the administration had not acted to have lost opportunity costs reinstated as part of the bill.

Mr. Steininger stated that the costs being discussed were still theoretical and neither OMB nor the administration had put together the opportunity cost issues. He continued that the money from the Higher Education Fund had not been yet moved into the CBR and was still managed separately in the fund. The move would not happen until all the

accounting work was completed to determine the balance available for appropriation that would be swept into the CBR. He reiterated that the CBR was invested more conservatively than the Higher Education Fund and there would be a difference in earnings once the funds were moved.

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Co-Chair Stedman pondered the legislature not reconvening before the regular legislative session in January. He asked if Mr. Steininger was indicating that the sweep would not take place until after January.

Mr. Steininger indicated that the timing was dependent upon the timeline of the audit of the annual financial report, which in the last few years had been early in the following calendar year.

Co-Chair Stedman thought the accounting had been late in the current year, and the account balances on sweepable items had not been available until February. The division had promised to have the accounting done more quickly. He thought the balances would be refined before February. He was concerned about the impact of hypothetical opportunity costs. He thought the actions of a few legislators would come at a cost to the state. He shared an additional concern about liquidation of funds that would be moved to the CBR.

Senator Hoffman referenced the school debt reimbursement program, and a presentation from the Legislative Finance Division (LFD) director the previous day, which had provided a figure of \$4,125,000. He asked about the difference between the number provided by LFD and the number in the bill for school debt reimbursement. He asked why the administration was treating the school debt reimbursement program, which was primarily an urban program, differently than the Rural Education Attendance Area (REAA), which was primarily a rural program. He thought there was a 50 percent difference. He emphasized the question of why one would treat rural education differently than urban education.

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Mr. Steininger relayed that the administration had vetoed the REAA funding to 50 percent of the statutory calculation, and the intention had been to also veto the school bond debt to 50 percent. The appropriation that came to the executive branch from the legislature was for less than 50 percent of the calculation for school bond debt, so no veto was made. The funding for REAA was greater as a percentage of the statutory calculation than that for school bond debt.

Senator Hoffman referred to the Kasayulie v. State of Alaska case and the court decision and settlement that directed the state to agree with statute. He questioned why the full decree had not been funded. [In 1997, Kasayulie and other parties brought suit against the state regarding education funding; the Kasayulie Consent Decree and Settlement Agreement addressed the violations of law and provided remedies for the violations].

Mr. Steininger commented that the statute that tied REAA funding to school bond debt reimbursement had been a result of the case, and REAA funding was a calculation based on school debt funding. When the administration had proposed 50 percent school bond debt reimbursement funding, the calculation also resulted in 50 percent REAA funding. He asserted that there attempt at parity to meet the intent of the case and fund REAA similarly to school bond debt reimbursement.

Senator Hoffman stated that the plaintiffs would disagree. He thought the administration should work with his office to work to ascertain if the decree was being followed.

Co-Chair Stedman explained that the legislature had funded the items in the budget, but the lack of the sweep and three-quarters vote to access funds had resulted in the cut. He thought it was due to a group of legislators primarily from the Matanuska-Susitna (Mat-Su) area. He pondered why the vetoes appeared to be from every area but for the Mat-Su. He asked why there was a geographical concentration in one area of the state in the administration's capital budget, when the legislature had not added anything to the capital budget.

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Co-Chair Stedman thought the geographical concentration was curious.

Mr. Steininger said that projects that were UGF had been vetoes where the administration thought other funds should be used.

Co-Chair Stedman pointed to page 2 of the backup.

Mr. Steininger discussed the chart, which covered capital projects that were impacted by the result of a CBR vote failure. The projects were not vetoed, and were included in HB 69, but from fund sources impacted by the CBR vote failure.

Co-Chair Stedman asked if the projects had been in the proposed bond package.

Mr. Steininger thought a couple of the projects had originally been in the bond package. He recounted that when the bond package appeared not to be going forward through the legislative process, subsequent amendments had been released to support the projects being funded with UGF. The projects were including in the capital budget using Statutory Budget Reserve (SBR) funds.

Co-Chair Stedman asked if the legislature was the appropriating body and chose the funding source.

Mr. Steininger answered affirmatively.

Co-Chair Stedman thought that funding was a legislative responsibility. He noted that the legislature had absorbed the governor's amendments to the capital budget through the end of the previous session. He expressed concern for regional balance and fairness.

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Mr. Steininger stated that the slide only represented projects funded with sweepable funds and were now unfunded due to the lack of the three-quarter vote.

Co-Chair Stedman stated that most of the capital budget was federal matching funds. He reiterated his concern with regional fairness across the state. He asked for Mr.

Steininger to provide an idea of when the administration would make a decision regarding the SBR being swept or not.

Mr. Steininger referenced regional fairness and noted that the spreadsheet only referenced the capital projects funded with sweepable funds and did not represent the entire enacted capital budget. He cited that there were other capital projects that had a more regional distribution. He reiterated that the projects listed on the slide were projects that were funded with sweepable funds in the bill that came from the legislature, that were subject to not being funded as a result of the lack of a three-quarters vote.

Co-Chair Stedman pointed out that most of the capital budget was federal matching funds through Department of Transportation and Public Facilities. He suggested that the capital budget chairman could pull the vetoes and do a comparison of the added amendments. He reiterated his concerns for regional fairness.

Senator von Imhof asked whether there had been discussion within the administration to resurrect the bond package in order to fund the projects that had not been funded.

Mr. Steininger replied that while the bond package legislation was still active, discussions would be part of the deliberative budget process leading up to December 15.

Senator von Imhof said that many projects were unfunded this year, including large projects and bridges. She spoke of the infrastructure conversation on the national level and thought there could be state matching funds. She wondered whether OMB was looking into how capital needs would be funded. She hoped that the governor did not continue to veto federal funds.

Co-Chair Stedman asked Mr. Steininger to address the veto of federal funds for DOT.

Mr. Steininger spoke to the governor's veto of federal funds for DOT. He said that they were excess funds and not necessary to achieve the mission of the department. He mentioned the federal infrastructure program and noted it was an ongoing topic of conversation for the administration.

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Co-Chair Bishop understood Mr. Steiniger's position but had an argument with the response to the previous question. He mentioned the capital budget sweep list and thought there were three items funded by the SBR that had come off the bond list. He referenced the recent court ruling involving the PCE Fund and the Alaska Federation of Natives, footnote 77, and the SBR-funded projects. [In 2021, the AFN disputed the legality of Governor Dunleavy's decision to sweep funds from the PCE through a state court filing. An Anchorage Superior Court Judge ruled that the PCE Fund was not subject to the sweep and directed the state to keep funding for the PCE Program.]

Mr. Steininger relayed that the case was specific to the PCE Fund and there was a question of whether the decision could be applied to the SBR. He commented that the SBR had always been on the administration's list of sweepable funds, and relayed that the administration was working with the Department of Law to understand how the case decision and analysis applied to the determination of sweepability.

Co-Chair Stedman understood that if the SBR was not sweepable all the projects listed on the sheet were safe. He referenced testimony by LFD from the previous day that indicated that if the governor had not vetoed the already-reduced dividend appropriation, the PFD would be \$1025.

Mr. Steininger thought that at the time of the vetoes everybody thought that the SBR would be subject to the sweep. He did not think that the characterization was fair.

Co-Chair Stedman thought that Mr. Steininger had misspoken. He asserted that the governor had not vetoed an \$1,100 dividend, but rather a \$525 dividend. He thought the concern was mechanical fallout.

Co-Chair Stedman said that he would be shocked if the SBR was swept because of all of the impacts.

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Senator Hoffman asked about the administration's logic regarding the SBR being swept, and discussed the PCE Fund never being swept. He wanted to thank the administration

for not appealing the court decision. He thought there was some disparity in the administration's thinking.

Mr. Steininger relayed that at the time the PCE Fund was determined to be sweepable a couple of years previously, the administration had worked with the Department of Law to apply a test to funds to determine whether or not the funds were subject to the sweep. The test considered whether a fund was available for appropriation with a simple majority vote, whether a fund could be spent without obligation, and whether a fund was defined as being part of the Permanent Fund or CBR. The test was applied in 2019 and the PCE Fund was determined to be sweepable. The test changed as an outcome of the AFN decision, and the new criteria was causing the administration to re-consider long-held understandings of what was or was not sweepable.

Senator Hoffman thought the most important test was the Hickel v. Cowper ruling. He asked if the attorney general had contemplated the information when considering if the funds should be swept.

Mr. Steininger relayed that the memo from Attorney General Clarkson (copy on file) had referenced the Hickel v. Cowper case, as part of the justification for establishing the test the department gave the administration to apply to funds. The AFN case added a new interpretation that would be applied to funds.

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Co-Chair Stedman thought many members agreed with Senator Hoffman, and referenced many years of status quo treatment of funds until the current administration started and made the decision to consolidate liquid assets to accomplish a political objectives as well as leverage rural Alaskans for a political philosophy. He thought the politics behind the matter were unfortunate.

Co-Chair Stedman mentioned the proposed budget deposit of \$3 billion. He asked for more explanation of why the committee should advance the funds for a cash flow need that was not apparent.

Mr. Steininger stated that the proposal for the \$3 billion bridge fund, and the 50-50 dividend both were in SB 3001 in support of the other constitutional amendments.

Co-Chair Stedman asked Mr. Steininger to name the constitutional amendments.

Mr. Steininger explained that the constitutional amendments were the primary objective of the special session from the perspective of the administration and would institute a structural reform of the state's finances. He continued that SB 3001 was a supporting bill to go along with the amendments. The administration was not suggesting that the \$3 billion bridge fund be enacted without the constitutional amendments, which would dramatically limit the state's access to assets. He summarized that the bill and the amendments were a package.

Co-Chair Stedman asked Mr. Steininger to name the proposed constitutional amendments that were tied to the bill.

Mr. Steininger cited SJR 6, which proposed to roll the ERA and the PCE Fund into the corpus of the Permanent Fund. He continued that SJR 6 would constitutionalize the 5 percent draw and the PFD. He reasoned that by protecting the ERA and the PCE Fund in the corpus of the Permanent Fund, only the 5 percent draw could be accessed. He proposed that the change would ensure that the Permanent Fund would be there for the future. The change would also mean that the state would need access to liquid assets to keep the state operating while budget reductions or additional revenues were enacted to bring the state into balance.

Co-Chair Stedman asked if there was a proposed vote of the people regarding taxes.

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Mr. Steininger stated that the item was not on the call for the special session. He mentioned the other item, a proposed reform to the constitutional spending limit. The proposed change was another piece of the administration's overall fiscal plan. He offered to bring the Department of Revenue commissioner or anyone else to the committee to have an in-depth discussion about the proposed constitutional amendments and elements of the fiscal plan.

Co-Chair Stedman asked if the constitutional amendments were more of a priority to the administration than the PFD.

Mr. Steininger asserted that the constitutional amendments addressed the dividend and would create a structure in which the PFD was rules-based and could be reliable in the future. He continued that the bill would implement the dividend as laid out in the constitutional amendment that would be put to voters.

[2:25:00 PM](#)

Co-Chair Stedman asked about a clause in Section 6 of the bill.

Mr. Steininger relayed that Section 6 was a retroactivity clause to ensure that the appropriations in Section 4 (which included the transfer and dividend transfer) were retroactive to July 1, 2021.

Co-Chair Stedman asked why the retroactivity clause in Section 6 was in the bill. He recalled that there had been issues. He recalled that there had been retroactive language in the last budget bill, in the event that the effective date failed and to make it clear when the starting time was. He asked for help understanding why there was a different structure being proposed after numerous administrations and legislatures operating under the same structure for appropriation bills. He referenced a previous budget bill that would have provided a balanced budget, an \$1,100 dividend, all the governor's requested capital projects and amendments, and would have set the legislature up to return in October to discuss re-writing the dividend formula. He questioned why the legislature should put a retroactivity clause in any piece of legislation for the administration.

Mr. Steininger thought Co-Chair Stedman had posed a fair question which he would possibly defer to the Department of Law. He noted that Section 7 would require a two-thirds vote of both bodies, otherwise the bill would not be effective for 90 days. He continued that whether or not a retroactivity clause would become superfluous to the vote would be a good question for the bill drafters.

[2:28:07 PM](#)

Co-Chair Stedman explained that the retroactivity clause that was normally put into budget appropriation bills every year to make it clear that it was not necessary to wait 90 days. He recalled that the legislature normally tried to submit the budget appropriation bill in May or early June to give the administration time for review and to go through its process. He thought the current administration had tried a completely different method, dissimilar to all other governors since statehood. He expressed concern over what he thought was the governor trying to leverage the operating budget against his ideological endeavor of constitutional amendments. He reminded that the legislature had a constitutional obligation to provide a bill by the end of June, but not an obligation to provide retroactive dates.

Co-Chair Stedman continued his remarks. He asserted that elected officials should consider the concept of doing no intentional damage. He relayed that the members had significant concerns regarding the administration's new interpretation of decades of precedence. He thanked the administration for not vetoing the \$4 million that was put in the constitutionally protected portion of the Permanent fund. He was concerned about liquidation of the Permanent Fund and hoped the committee would consider an additional recommendation into the budget to continue to build the constitutionally protected portion of the fund. He mentioned the necessity of considering the markets.

Co-Chair Stedman discussed the importance of the two recent appropriations to the Permanent Fund, which he thought benefitted all future Alaskans.

[2:33:36 PM](#)

Co-Chair Stedman continued his remarks. He thought it was unfortunate that there had been an attempt to block the appropriation to the protected part of the Permanent Fund. He mentioned concerns about retroactive dates and truth in budgeting. He mentioned the capital budget and regional fairness. He hoped the administration would consider its "lackadaisical" position regarding the reverse sweep. He lamented the work and difficulty for employees caused by the lack of a reverse sweep. He thought it was important to deal with education issues, including the Washington, Wyoming, Alaska, Montana, and Idaho (WWAMI) Program.

Co-Chair Stedman hoped there would be enough legislators that would realize that the lack of reverse sweep would cost the state money. He discussed the status quo budget process and hoped that the legislature could put together a budget document that was not considered deficient.

Co-Chair Stedman thanked Mr. Steininger for his work. He discussed the agenda for the following day.

SB 3001 was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

2:39:37 PM

The meeting was adjourned at 2:39 p.m.